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Hearing Date and Time: June 3, 2009, 3:00 p.m.  
Objection Deadline: May 29, 2009

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK**

In re:

VICTORY MEMORIAL HOSPITAL,  
  
Debtor.

Chapter 11

Case Nos. 06-44387-CEC  
06-44388-CEC  
06-44389-CEC

(Jointly Administered)

**LIMITED OBJECTION OF SECURED CREDITOR, VGM FINANCIAL SERVICES,  
TO THE DEBTORS' MOTION AND APPLICATION FOR AN ORDER  
(A) AUTHORIZING THE EMPLOYMENT AND RETENTION OF GREAT  
AMERICAN GROUP, LLC, A LIQUIDATOR, AND (B) APPROVING THE SALE  
OF CERTAIN ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS,  
ENCUMBRANCES AND OTHER INTERESTS**

Creditor, VGM FINANCIAL SERVICES (hereinafter referred to as "VGM") objects to the referenced Motion of the Debtors (hereinafter referred to as the "Motion") and responds to the requests for relief set forth therein. VGM, by and through its counsel, hereby objects to the Debtors' Motion, and in support of such objection, states as follows:

1. On or about January 24, 2005, the Debtors and VGM entered into Rental Agreement No. 8354001 (the "Agreement"). A true copy of the Rental Agreement is attached hereto and made a part hereof as Exhibit "A". The equipment which is the subject of the Agreement is more particularly described therein.

2. On or about December 23, 2008, Creditor, VGM, received correspondence from the Debtors advising that, due to a Department of Health mandate to close and/or terminate its operation, it was terminating existing contracts. As such, the Debtors ceased making any payments under the Agreement in December of 2008. To date, despite several requests, the Debtors have not provided us with the information necessary for VGM to recover its equipment. On or about May 8, 2009, VGM filed a Motion to Compel the Debtors to Return Equipment. The Motion was originally returnable on Wednesday, June 3, 2009. However, pursuant to the Debtors' request, we consented to a one (1) month adjournment of VGM's Motion to Compel to give the Debtors the opportunity to ascertain whether SUNY- Downstate intends to assume the subject Agreement.

3. In their Motion, the Debtors seek to sell certain assets free and clear of all liens, claims, encumbrances and interests. However, the Debtors do not specify which assets they intend to sell. As such, VGM cannot properly determine whether its equipment is included in the sale. If the Debtors intend to include VGM's equipment in the sale, VGM would like the opportunity to analyze whether it is in its best interest to have the equipment included in the sale or whether it should repossess its equipment and sell same on its own in mitigation of VGM's damages.

Accordingly, Creditor, VGM, respectfully requests that the Court deny the Debtors' Motion as to any equipment which is the subject of an Agreement between VGM and the Debtors.

Dated: Westwood, New Jersey  
May 29, 2009

LAW OFFICES OF CHARLES A. GRUEN

By: /s/ Charles A. Gruen  
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Attorneys for Secured Creditor,  
VGM Financial Services

## **EXHIBIT A**

VGM FINANCIAL SERVICES RENTAL AGREEMENT		LEASE #8354001	
CUSTOMER: VICTORY MEMORIAL HOSPITAL			
ADDRESS: 9036 7TH AVENUE			
CITY: BROOKLYN		COUNTY: KINGS	
EQUIPMENT DESCRIPTION: SEE ATTACHED SCHEDULE A		STATE: NY	
TOTAL # OF RENTAL PMTS 60		ZIP: 11228	
PAYMENTS:		ADVANCES	
Payment \$4,561.97		First: \$0.00	
Tax \$ 0.00		Last:	
Total \$4,561.97		Security Deposit:	
		PURCHASE OPTION	
		FMV: \$1.00: <u>X</u>	
		Other:	

### TERMS AND CONDITIONS - READ CAREFULLY BEFORE SIGNING

- RENTAL:** VGM Financial Services ("VGM") rents to Customer the equipment, furniture, fixtures, machinery, inventory and goods (collectively, "Equipment") described above and in any schedule made a part hereof upon the terms and conditions set forth herein. This Agreement shall not be deemed terminated until Customer has fulfilled all obligations hereunder. The parties intend this Agreement to be governed by Article 2A of the Uniform Commercial Code ("UCC"). Pursuant to Article 2A, Customer is entitled to the promises and warranties, including those of any third party, provided to VGM by the Equipment supplier. Customer may contact the Equipment supplier and receive an accurate and complete statement of the promises and warranties, including any disclaimers and limitations of them or of remedies.
- PAYMENTS:** Other than as set forth in a rider hereto, payments are due monthly, beginning the date designated by VGM. VGM may change the payment by not more than 10% in the event of price changes, changed order, etc. Security deposit is refundable upon expiration of the Agreement provided all terms and conditions of this Agreement have been fulfilled. Security deposit and payments may be commingled and do not earn interest.
- EQUIPMENT ACCEPTANCE/USE:** Customer has inspected the Equipment, and Customer's acceptance of the Equipment shall be conclusively and irrevocably evidenced by Customer signing this Agreement, and upon acceptance, THIS AGREEMENT SHALL BE NON-CANCELABLE, and Customer's obligations hereunder shall not abate for any reason. Customer agrees that the Equipment will be used for business purposes only.
- DISCLAIMER OF WARRANTIES:** THE EQUIPMENT IS BEING RENTED IN "AS IS" CONDITION. CUSTOMER AGREES THAT VGM IS NOT THE MANUFACTURER OR SUPPLIER OF THE EQUIPMENT. CUSTOMER HAS SELECTED THE EQUIPMENT BASED UPON ITS OWN JUDGMENT AND ACKNOWLEDGES THAT VGM HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATION OR WARRANTY OF ANY KIND, DIRECT OR INDIRECT, EXPRESS OR IMPLIED, AS TO THE SUITABILITY, DURABILITY, DESIGN, OPERATION OR CONDITION OF THE EQUIPMENT, ITS MERCHANTABILITY, FITNESS FOR USE FOR ANY PARTICULAR PURPOSE, OR OTHERWISE. No broker, equipment supplier, or other person (other than an employee of VGM) is an agent of VGM.
- GOVERNING LAW; LITIGATION:** This Agreement shall be interpreted and governed by the laws of the State of Iowa. BY SIGNING THIS AGREEMENT, CUSTOMER AGREES TO THE JURISDICTION AND VENUE OF FEDERAL AND STATE COURTS IN IOWA AND CUSTOMER HEREBY WAIVES ITS RIGHT TO A JURY TRIAL. VGM at its sole discretion may enforce this Agreement in any state or federal court having lawful jurisdiction thereof.
- SECURITY AGREEMENT:** If this Agreement is determined to create a security interest, Customer hereby grants VGM a security interest in all Equipment financed by or rented from VGM of any kind or nature whatsoever, wherever located, whether now owned or hereafter acquired, and all returns, repossessions, substitutions, replacement parts, accessories, and accessions thereto and thereof, and all proceeds thereof.
- APPOINTMENT OF ATTORNEY IN FACT:** Customer authorizes VGM, its successors and assigns, and VGM's filing agent to cause this Agreement, or any other document(s) showing the interest of VGM, including but not limited to UCC financing statements, to be authenticated and filed or recorded. In addition, Customer appoints VGM, its successors and assigns, as Customer's attorney-in-fact (1) to arrange for property damage coverage under a policy of insurance and to transmit Customer's premium payments to the insurer, (2) to deal with and to direct any insurer as to any matter concerning the claim for, disposition of, and/or application of proceeds from any policy of insurance, and (3) to receive payments and execute and endorse all documents, checks, drafts, or other instruments necessary or advisable to secure payments due under any policy of insurance. Customer authorizes VGM to make non-substantive changes hereto, including but not limited to Customer's legal name. These appointments and authorizations shall be continuous. Nothing in this paragraph shall relieve Customer of its duty to procure required insurance, to make timely insurance claims, and to otherwise cooperate with insurance carriers and VGM in seeking insurance coverage and recoveries.
- NET LEASE:** Customer agrees to be unconditionally obligated to pay all payments and other amounts due hereunder no matter what happens, even if the Equipment is damaged or destroyed, if it is defective, if Customer no longer can use it, or if the manufacturer or supplier ceases doing business or cannot service and/or support the Equipment, and irrespective of any set-off, counterclaim, defense, or other right which Customer may have against VGM or any other person.

### SEE REVERSE SIDE FOR ADDITIONAL TERMS AND CONDITIONS

Customer acknowledges having read the terms and conditions printed above and on the reverse side hereof, and unconditionally agrees to same. By signing below, Customer acknowledges that it has received delivery of all Equipment and that the Equipment is satisfactory for purposes of this Agreement. Customer requests that VGM countersign this Agreement and requests and hereby authorizes VGM to pay the Equipment vendor/manufacturer. VGM Complies with Section 326 of the USA PATRIOT Act. This law mandates that VGM verify certain information about Customers while processing account applications.

Acceptance by VGM on 1-24-05

THIS AGREEMENT IS NOT BINDING

UNTIL ACCEPTED BY VGM

VGM: VGM Financial Services

By:

1111 West Spar Mannan Dr., Waterloo, Iowa 50701

C:\Documents and Settings\juhl\Local Settings\Temporary Internet Files\OLK3\VGM Financial Rental Agreement NOAR.doc

DATE: 12/17/04

CUSTOMER: VICTORY MEMORIAL HOSPITAL

By:

KRISHIN BHATIA

TITLE

Revised 3/3/03



**SCHEDULE "A"**

Customer:

This Schedule "A" attached to and made a part of Rental Agreement No. 8354001dated X 12/15/04

Address of Equipment: (if different than address on Rental Agreement) \_\_\_\_\_

\*\*\*\*\* ASSET #1 \*\*\*\*\*

Vendor: 2227 RESP.HOSPITAL-2227

- 10 -- V1000 ESPRIT VENTILATOR
- 10 -- 1001453 LX 200-MJL CART
- 10 -- 1001664 U.S. 02 HOSE
- 10 -- 27113 FLEX ARM
- 10 -- 1002497 FLEX ARM BRACKET
- 10 -- 500-100-09 DISPOSABLE EXPIRATORY FILTER (SPU)
- 10 -- 1002504 INSPIRATORY FILTER (SPU)
- 10 -- 1001832 A/C POWER CORD
- 10 -- 1001737 TEST LUNG
- 10 -- 1001668 PATIENT CIRCUIT
- 10 -- 1001470 ENGLISH BACK-UP BATTERY
- 10 -- 1003772 ESPRIT GRAPHICS OPTION
- 10 -- 1004956 ESPRIT COLOR SCREEN OPTION
- 10 -- 1012595 ESPRIT RESPIRATORY MECHANICS
- 10 -- 1009829 TRENDING OPTION, ESPRIT
- 10 -- 1016396 FLOWTRAK
- 10 -- TWO YEAR WARRANTY ON PARTS AND LABOR
- 10 -- 1002241 02 CYLINDER BRACKETS
- 10 -- 1002227 F&P HUMIDIFIER BRACKET
- 3 -- 582059 BIPAP VISION
- 3 -- 6700-00 TIDAL WAVE CO2 MAINSTREAM CAPNOGRAPHY MONITOR

This schedule is hereby verified as correct by the Undersigned Customer, who acknowledges receipt thereof. The Undersigned Customer agrees that VGM Financial Services may accept a facsimile copy of this document bearing facsimile signatures, which shall be deemed an original for all purposes.

By: X

KRISHIN BHATIA

X

ADMINISTRATOR

## UCC PLUS ELECTRONIC FILING ACKNOWLEDGEMENT

The information contained below is an acknowledgment that the filing office has received and filed the UCC document identified by the listed UCC ID #.

Filer's Reference #: NEW/2004120213

UCC ID # 414117 / 12650

File Number: 200501245061552

Submitted By: Linda Juhl

File Date: 01/24/2005

State: NY

Fee Amount: 20

Jurisdiction: Secretary of State

STR:

Debtor 1Debtor 2

Business/Individual Name	VICTORY MEMORIAL HOSPITAL
Mail Address	9036 7TH AVENUE
City	BROOKLYN
State	NY
Postal Code	11228
Country	USA
Type of Organization	CORPORATION
Jurisdiction of Org	NY
Organizational ID	
Debtor Status	

Secured Party

Name	VGM FINANCIAL SERVICES A DIVISION OF TCF LEASING, INC.
Address	1111 SAN MARNAN DRIVE
City, State Zip	WATERLOO IA 50701

Collateral Statement

ANY AND ALL EQUIPMENT FURNITURE FIXTURES MACHINERY INVENTORY GOODS AND SOFTWARE FINANCED BY OR LEASED FROM VGM FINANCIAL SERVICES AND THAT ARE SUBJECT OF AN AGREEMENT BETWEEN DEBTOR AND VGM FINANCIAL SERVICES OF ANY KIND OR NATURE WHATSOEVER WHEREVER LOCATED WHETHER NOW OWNED OR HEREFTER ACQUIRED AND ALL RETURNS REPOSSESSIONS SUBSTITUTIONS REPLACEMENT PARTS ADDITIONS ACCESSORIES AND ACCESSIONS THERETO AND THEREOF AND ALL PROCEEDS THEREOF.

Alternative Designation (if applicable):

Assignor

All data contained in this acknowledgment was provided by the filing office. Please review all the data and notify US Corporate Services of any errors immediately.